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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,316	07/02/2002	Toshiharu Furukawa	BUR920010222	8270
23550	7590	11/18/2004	EXAMINER	
HOFFMAN WARNICK & D'ALESSANDRO, LLC			VU, HUNG K	
3 E-COMM SQUARE			ART UNIT	PAPER NUMBER
ALBANY, NY 12207			2811	

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/064,316	Applicant(s) FURUKAWA ET AL.	
	Examiner Hung Vu	Art Unit 2811	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,21,22,34-36 and 43-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,4,21,22 and 44 is/are allowed.
- 6) ☒ Claim(s) 34-36,43 and 45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The amendment filed 02/04/04 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "A single insulating layer 24 having a portion that extends on two opposing vertical sides of a second portion of the spacer 16 and contacts the gate electrode 14".

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 34 – 36, 43 and 45 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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The specification does not disclose an insulating layer having a portion that extends on two opposing vertical sides of a second portion of the spacer and contacts the gate electrode, as recited in claim 34.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 34 – 36, insofar as in compliance with 35 USC 112, are rejected under 35 U.S.C. 102(b) as being anticipated by Wei (PN 5,369,303, of record).

With regard to claim 34, Wei discloses, as shown in Figure 9, a semiconductor comprising:

a gate electrode (16);

the spacers (40) adjacent the gate electrode;

a contact (48) having a portion that extends on two opposing vertical sides of a first spacer (40), the contact contacts a diffusion (42) adjacent the gate electrode;

an insulating layer having a portion that extends on two opposing vertical sides of a second spacer (40);

a masking layer (32) contacting the gate electrode for insulating the gate electrode from the contact.

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With regard to claim 35, Wei discloses the masking layer caps at least a portion of the gate electrode.

With regard to claim 36, Wei discloses the contact has an upper portion that is larger than a lower portion that contacts the diffusion.

Allowable Subject Matter

4. Claims 1, 4, 21, 22 and 44 allowed.

Response to Arguments

5. Applicant's arguments filed 08/23/04 have been fully considered but they are not persuasive.

It is argued, at pages 5-7 of the Remarks, that the specification, at paragraph 23, states that "vertical structure 10 includes at least one spacer 16," which means that a single spacer is possible and that one with ordinary skill in the art would recognize that the spacer is a single one formed around the gate electrode. This argument is not convincing because one with ordinary skill in the art would interpret the phrase "vertical structure 10 includes at least one spacer 16", by looking at Figures 3 and 4 of the present application, as the vertical structure 10 includes a spacer 16 on a right side of the structure, or an another spacer 16 on a left side of the structure, or both spacers 16 on either side of the structure. However, nowhere in the specification or the drawings disclose that a single spacer forms around the gate electrode.

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It is argued, at page 7 of the Remarks, that since the specification is open to two equally possible interpretations, the added text is supported by the specification, and not a new matter. This argument is not convincing because the interpretations that Applicant relied on are not true. In fact, one with ordinary skill in the art would interpret the phrase “vertical structure 10 includes at least one spacer 16”, by looking at Figures 3 and 4 of the present application, as the vertical structure 10 includes a spacer 16 on a right side of the structure, or an another spacer 16 on a left side of the structure, or both spacers 16 on either side of the structure. Nowhere in the specification or the drawings disclose that a single spacer forms around the gate electrode. Therefore, the added text is a new matter.

It is argued, at pages 7-8 of the Remarks, that if the specification and Fig. 19 can disclose two spacers, it logically follows that it can also disclose a single spacer scenario, which obviates any possible new matter. This argument is not convincing because the specification and Fig. 19 do not disclose a single spacer forms around the gate electrode.

It is argued, at page 8 of the Remarks, that the specification and Fig. 19 discloses the subject matter as claimed. This argument is not convincing for the reasons as stated above.

It is argued, at pages 8-9 of the Remarks, that Wei does not disclose an insulating layer that contacts two opposing vertical sides of a second portion of a spacer and contacts a gate electrode. This argument is not convincing due to the introduction of new matter situations. Note that Figure 19 shows the contact (50) contacts the whole side of the spacer (16) so there is no exist of

the insulating layer, and Figure 20 shows the insulating layer (138) extends on only one side of the spacer, not on two opposing sides of the spacer.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hung K. Vu whose telephone number is (571) 272-1666. The examiner can normally be reached on Mon-Thurs 6:00-3:30, alternate Friday 7:00-3:30, Eastern Time.

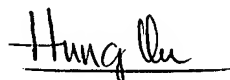
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eddie C. Lee can be reached on (571) 272-1732. The Central Fax Number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Vu

November 10, 2004

A handwritten signature in black ink, appearing to read "Hung Vu", written over a horizontal line.

Hung Vu

Patent Examiner